

RCN member briefing paper on decriminalisation of termination of pregnancy

BRIEFING PAPER

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Introduction

The Royal College of Nursing (RCN) has launched a UK-wide survey of its members on the principle of removing criminal sanctions from termination of pregnancy. This is commonly known as decriminalisation of abortion.

This briefing paper provides some background to the debate around decriminalisation and will help you to answer the survey.

The survey will open on Friday 16 February and close at 11pm on Sunday 18 March. It should take no more than five minutes to complete.

The survey can be found at:
www.smartsurvey.co.uk/s/RCNDoToP

If you have any questions about the survey or briefing paper, please contact
NDproject2018@rcn.org.uk

What is termination of pregnancy?

Termination of pregnancy is the medical process of ending a pregnancy so it doesn't result in the birth of a baby.¹ It is also commonly known as therapeutic or induced abortion. A pregnancy may be terminated using medication or through a surgical procedure.

Terminations can only be carried out in an NHS hospital or a licensed clinic, if the circumstances meet the current laws.²

In 2016, 190,406 terminations were carried out in England and Wales. 92% of these terminations were carried out at under 13 weeks gestation. 81% were carried out at under 10 weeks.³

In Scotland, 12,063 terminations were carried out in this period.⁴

In Northern Ireland, 13 terminations were carried out in health and social care hospitals during 2016/17.⁵

Why is abortion sometimes referred to as termination of pregnancy and vice versa?

Both terms refer to the same procedure. Termination of pregnancy is the preferred term agreed by the Department of Health.

Abortion remains a commonly used term.

What is the current law on termination of pregnancy?

The Abortion Act 1967 (amended by the Human Fertilisation and Embryology Act 1990) defines the grounds upon which a termination of pregnancy is legal. The Act covers England, Scotland and Wales but does not apply to Northern Ireland, where the Offences Against the Person Act 1861 applies (alongside more recent case law).

The Abortion Act 1967 made termination of pregnancy legal in England, Wales and Scotland (but not Northern Ireland) up to 28 weeks' gestation. In 1990, the law was amended by the Human Fertilisation and Embryology Act, so that the 28 week limit on viability was reduced to 24 weeks.

There are exceptions to this 24 week limit which include where it is necessary to save the life of the woman, there is evidence of extreme fetal abnormality or there is a grave risk of physical or mental injury to the woman.

The 1967 Act, and subsequent amendment in 1990, were introduced to reduce the mortality and morbidity around illegal or 'back street' terminations.

If a termination takes place outside of the criteria of the 1967 Abortion Act, it is deemed 'unlawful' under the Offences Against the Person Act 1961 and could result in a prison sentence for the women, men and/or health care professional/s involved.

In Northern Ireland, termination of pregnancy is illegal except in very limited cases.

In the Isle of Man, the Government is currently considering changes to the laws associated with termination of pregnancy.

Information on the current law in the Channel Islands can be found in *Decriminalisation of abortion: a discussion paper from the BMA*.⁶

The BMA discussion paper also contains detailed information about what makes termination of pregnancy a crime.⁷

What does the RCN say about the current law?

The College aims to support its members in providing the very highest standards of compassionate care for women who choose to have a termination, and are committed to

providing considerate and empathetic support to nurses, midwives and health practitioners who work to provide safe and quality care.⁸

The RCN believes that, whether pregnancy is planned or unplanned, every woman should have the right to choose how to deal with this life event, within the current legislation.

Termination of pregnancy and contraception are necessary and integral to the provision of a comprehensive sexual and reproductive health care service, and support the current legislation.

The RCN equally acknowledges and respects those nurses, midwives and health practitioners who have a conscientious objection within current legislation.

The Abortion Act 1967 provides health care professionals with a statutory right of conscientious objection, which allows them to withdraw from participating in the termination of pregnancy.

In Northern Ireland, there is no statutory right for health care professionals to conscientiously object to involvement in abortion where it has been deemed lawful.

What is decriminalisation?

Decriminalisation is best understood as removing specific criminal sanctions associated with termination of pregnancy.

According to the British Medical Association, decriminalisation “at the very basic level... involves changing the default position so that instead of [termination of pregnancy] being a crime for which there are some circumstances in which [it] is lawful, [termination of pregnancy] would be lawful with some limited exceptions, such as where the procedure is undertaken on a woman who has capacity without her consent.

“[Decriminalisation] need not mean an absence of regulation; limits could still be set, but subject to professional and regulatory, rather than criminal sanctions.”⁹

Decriminalisation would most likely mean termination of pregnancy is regulated in the same way as other medical procedures.

There are different ways in which termination of pregnancy could be decriminalised. A range of options is discussed in more detail in *Decriminalisation of abortion: a discussion paper from the BMA*¹⁰; for example, it can mean:

- Complete/total decriminalisation: the complete removal of termination of pregnancy from criminal law.
- Decriminalisation and selective recriminalisation: the complete removal of termination of pregnancy from current criminal law and the creation of new criminal offences for a specified set of circumstances relating to termination of pregnancy.
- Selective decriminalisation: repealing some and/or amending some or all of the existing criminal law relating to termination of pregnancy.

Why is this an issue for the RCN?

There are a number of campaigns focussing on decriminalisation of termination of pregnancy.

A campaign in favour of decriminalisation, called *We Trust Women*, was launched by the British Pregnancy Advisory Service (BPAS), the largest independent provider of TOP services across England and Wales, including NHS contracts, in 2015-16.

To date, the Royal College of Midwives (RCM), Royal College of Obstetricians and Gynaecologists (RCOG), The Faculty of Sexual and Reproductive Health (FSRH) and the British Medical Association (BMA) have all recently published statements in support of removing criminal sanctions associated with termination of pregnancy.

The RCN does not currently have a position on decriminalisation of termination of pregnancy. We are committed to having a position so that we can contribute to the growing debate.

Where can I find the arguments for and against decriminalisation?

Some of the key arguments for and against decriminalisation can be found in Figure 1, which is taken from *Decriminalisation of abortion: a discussion paper from the BMA*¹¹ (p.28-31).

While the BMA discussion paper provides useful information of the arguments on either side of the debate, please note this is not an exhaustive list.

Figure 1	BMA discussion paper reference
Arguments in favour of decriminalisation	
• Changes in societal views and attitudes	p.28
• Changes in clinical practice	p.28
• Autonomy	p.28
• Removing unacceptable stigma	p.29
• Risks to doctors (health care professionals)	p.29
• Safer provision of termination	p.29
• Giving women the time to make the right decision	p.29
• Preventing unsupervised terminations	p.29
• Criminalising women in 'hard' cases is the wrong response	p.29
• Appropriate accountability	p.30
Arguments against decriminalisation	
• Decriminalisation is unnecessary – legislation for 'lawful' termination should be reformed	p.30
• The moral status of the fetus	p.30
• 'Hard' cases would be better dealt with through specific prosecutorial guidance	p.30
• The need for effective deterrents	p.30
• Unsafe termination	p.31
• Insufficient accountability	p.31
• A good compromise	p.31
• More restrictive access in reality	p.31
• Termination as an alternative to contraception	p.31

Why is the RCN surveying its members?

We understand that RCN members, some of whom are directly involved in termination of pregnancy services, will have varying views.

It is vital that we hear from as many members as possible because your views will help inform our position statement.

What is the survey asking me?

The survey will ask whether or not you support the principle of removing criminal sanctions associated with termination of pregnancy.

There are different ways in which termination of pregnancy could be decriminalised. This survey does not seek your opinions on this - only the principle of removing criminal sanctions.

The RCN is not consulting on the wider issues of termination of pregnancy, including the arguments for or against the procedure, nor is the RCN calling for any change to gestational limits or change to the right to conscientious objection by health care professionals.

Before we ask for your views, we also wish to gather some information about your role and place of work, as this will help us to analyse the survey results. These questions are consistent with our assurance that views cannot be attributed to individual members.

How can I take part in the survey?

The survey is exclusively online and can be accessed at:

www.smartsurvey.co.uk/s/RCNDoToP

The survey will open on Friday 16 February and close at 11pm on Sunday 18 March. It should take no more than five minutes to complete.

Why do you need my RCN membership number?

This survey is for RCN members only. Asking for your membership number ensures that only RCN members take part.

Responses to the survey are limited at one per RCN membership number.

How will the position statement be developed?

The results of the all-member survey will inform work by a panel of RCN staff and members to agree a position statement.

The position statement will be published on the RCN website.

It is anticipated that this project is the initial phase of ongoing work for the RCN.

Footnotes

- ¹ *Abortion, NHS Choices*, available at: www.nhs.uk/conditions/abortion/ [accessed 2018]
- ² *Abortion, NHS Choices*, available at: www.nhs.uk/conditions/abortion/ [accessed 2018]
- ³ *Report on abortion statistics in England and Wales for 2016*, Gov.UK, available at: www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2016 [accessed 2018]
- ⁴ *Termination of Pregnancy Statistics, ISD Scotland*, available at: www.isdscotland.org/Health-Topics/Sexual-Health/Publications/2017-05-30/2017-05-30-Terminations-2016-Report.pdf [accessed 2018]
- ⁵ *Northern Ireland Termination of Pregnancy Statistics 2016/17*, ni.gov.uk, available at: www.health-ni.gov.uk/sites/default/files/publications/health/hs-termination-of-pregnancy-stats-16-17.pdf [accessed 2018]
- ⁶ *Decriminalisation of abortion: a discussion paper from the BMA*, BMA, p.35.
- ⁷ *Decriminalisation of abortion: a discussion paper from the BMA*, BMA, p.10-18.
- ⁸ *RCN Termination of Pregnancy (Induced Abortion)*, RCN, 2013, available at: www.rcn.org.uk/professional-development/publications/pdf-006685 [accessed 2018]
- ⁹ *Decriminalisation of abortion: a discussion paper from the BMA*, p.8
- ¹⁰ *Decriminalisation of abortion: a discussion paper from the BMA*, p.23
- ¹¹ *Decriminalisation of abortion: a discussion paper from the BMA*, BMA, p.28-31.

References

Current legislation in the UK

- Abortion Act 1967* (www.legislation.gov.uk/ukpga/1967/87/contents)
- Human Fertilisation and Embryology Act 1990*, amended 2008 (www.legislation.gov.uk/ukpga/2008/22/contents)
- Guidance for HSC professionals on termination of pregnancy in Northern Ireland* (www.health-ni.gov.uk/publications/guidance-hsc-professional-termination-pregnancy-northern-ireland)

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Termination of pregnancy (induced abortion) (www.rcn.org.uk/professional-development/publications/pdf-006685)

Termination of Pregnancy, an RCN nursing framework (www.rcn.org.uk/professional-development/publications/pub-005957)

Other

Decriminalisation of abortion: a discussion paper from the BMA (www.bma.org.uk/advice/employment/ethics/ethics-a-to-z/abortion)

Abortion Statistics, England and Wales: 2016, Department of Health (www.gov.uk/government/uploads/system/uploads/attachment_data/file/652083/Abortion_stats_England_Wales_2016.pdf)

Abortion Reform Bill 2017, Feedback Updated 14 Dec 2017, Isle of Man Government (<https://consult.gov.im/office-of-the-clerk-of-tynwald/abortion-reform-bill-2017/>)

RCOG backs decriminalisation of abortion, Royal College of Obstetricians and Gynaecologists (www.rcog.org.uk/en/news/rcogbacks-decriminalisation-of-abortion/)

Vacuum aspiration for induced abortion could be safely and legally performed by nurses and midwives, Sally Sheldon, Joanne Fletcher, J Fam Plann Reprod Health Care published online January 18, 2017 (<http://srh.bmj.com/content/familyplanning/early/2017/01/18/jfprhc-2016-101542.full.pdf>)

Northern Ireland Termination of Pregnancy Statistics 2016/17, ni.gov.uk (www.health-ni.gov.uk/sites/default/files/publications/health/hs-termination-of-pregnancy-stats-16-17.pdf)

Abortion, NHS Choices (www.nhs.uk/conditions/abortion/)

Termination of Pregnancy Statistics, ISD Scotland (www.isdscotland.org/Health-Topics/Sexual-Health/Publications/2017-05-30/2017-05-30-Terminations-2016-Report.pdf)

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